

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 27 2017

(1) AMY HAMIL,

Plaintiff,

vs.

(2) STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a Foreign For
Profit Corporation,

Defendant.

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

Case No.

17 CV 599 TCK - FHM

NOTICE OF REMOVAL

The Petitioner, State Farm Mutual Automobile Insurance Company ("State Farm"), Defendant in the above-captioned case, states the following:

1. The above-entitled cause was commenced on October 5, 2017 in the District Court of Tulsa County, entitled *Avy Hamil v. State Farm Mutual Automobile Insurance Company*, Case No. CJ-2017-3957. A copy of Plaintiff's Petition setting forth her claims for relief upon which the action is based is attached hereto and marked Exhibit 1. A copy of the Summons served upon State Farm is attached hereto and marked Exhibit 2. State Farm was served Summons and Petition via service on the Oklahoma Insurance Department on October 11, 2017. (Summons, Exhibit 2).

2. State Farm's principal place of business is in the State of Illinois, and State Farm is incorporated in the State of Illinois. Plaintiff, Avy Hamil, is a resident and citizen of Oklahoma County, State of Oklahoma. (Petition, ¶ 1, Exhibit 1). Plaintiff's cause of action is for alleged breach of an automobile insurance policy and alleged breach of the implied duty of good faith and fair dealing. The matter in controversy between Plaintiff and State Farm, according to Plaintiff's demand, exceeds Seventy-Five Thousand and No/100ths Dollars (\$75,000.00), exclusive of interests and

Handwritten signature

costs. (Plaintiff's Petition, p. 5, Exhibit 1).

3. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332 (1992), by reason of the fact that this is a civil action wherein the amount in controversy, according to Plaintiff's demands, exceeds Seventy-Five Thousand and No/100ths Dollars (\$75,000.00), exclusive of interest and costs and is between citizens of different states. Accordingly, this action may be removed by State Farm pursuant to 28 U.S.C. § 1441(a).

4. This Notice of Removal is filed in this Court within thirty (30) days after October 11, 2017, the date State Farm was served with a copy of Plaintiff's Petition, which was the initial pleading setting forth the claim for relief upon which this action is based. (Summons, Exhibit 2).

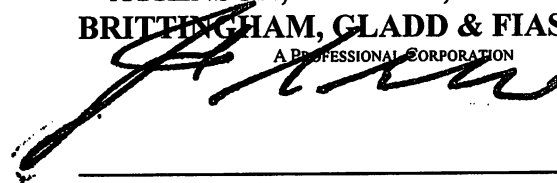
5. Copies of all process, pleadings, and Orders served upon Defendant, State Farm, have been attached hereto as Exhibit 1 (Petition), and Exhibit 2 (Summons). Pursuant to LCvR 81.2, a copy of the state court docket sheet is attached as Exhibit 3.

WHEREFORE, Defendant, State Farm Mutual Automobile Insurance Company, prays that this action be removed.

Dated this 27th day of October, 2017.

Respectfully submitted,

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & FIASCO**
A PROFESSIONAL CORPORATION

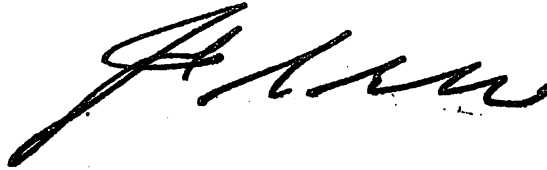


John S. Gladd, OBA #12307
525 South Main Street, Suite 1500
Tulsa, Oklahoma 74103-4524
Telephone: (918) 582-8877
Facsimile: (918) 585-8096
Attorney for Defendant State Farm

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of October, 2017, a true and correct copy of the
aforementioned document was mailed to the following, with postage prepaid:

Donald E. Smolen, II
Laura L. Hamilton
SMOLEN, SMOLEN & ROYTMAN
701 S. Cincinnati Avenue
Tulsa, OK 74119
Attorneys for Plaintiff

A handwritten signature in black ink, appearing to read "D. Smolen", is written over a horizontal line.

S:\Files\416314\Removal\notice of removal-mac.wpd

DISTRICT COURT
IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

OCT - 5 2017

AVY HAMIL,
Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, A Foreign For
Profit Corporation,
Defendants.

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Case No. CJ-2017-03957

LINDA G. MORRISSEY

ATTORNEY LIEN CLAIMED

PETITION

COMES NOW the Plaintiff, Avy Hamil, by and through her attorneys of record, and for her cause of action against the Defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), alleges and states the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Avy Hamil, is, and was at all times relevant hereto, a resident of Tulsa County, Oklahoma.
2. Defendant State Farm is a foreign for profit insurance corporation doing business in Tulsa County, Oklahoma.
3. The accident and injuries that give rise to this litigation occurred in Tulsa County, Oklahoma.
4. This Court has jurisdiction and venue is proper in Tulsa County, Oklahoma.

STATEMENT OF FACTS

5. Paragraphs 1-4 are incorporated herein by reference.
6. On or around November 7, 2015, a motor vehicle accident involving Plaintiff and third party tortfeasor Fredherik Rosas-Mendoza occurred when Rosas-Mendoza negligently rear-



ended the vehicle in which Plaintiff was traveling. Rosas-Mendoza had state minimum insurance coverage at the time of the accident.

7. As a result of negligence of Rosas-Mendoza, Plaintiff has suffered significant personal injuries, medical expenses, and property damages.

8. The vehicle Plaintiff was operating at the time of this accident was covered under a policy of uninsured/underinsured motorist ("UIM") coverage, written by Defendant State Farm.

9. The tortfeasor responsible for Plaintiff's injuries – Rosas-Mendoza – was underinsured for Plaintiff's injuries at the time of this loss and Plaintiff submitted a demand to State Farm for all applicable benefits due under the applicable policy of insurance.

10. Thereafter, Plaintiff cooperated with all of State Farm's requests for additional information.

11. Plaintiff has relied on Defendant State Farm to properly handle her claims and make payment pursuant to the coverage afforded under the applicable policy of insurance. Plaintiff has made due demand on the Defendant for payment of policy benefits and otherwise met all of the conditions precedent for payment under the policy.

12. Defendant State Farm has and continues to unreasonably fail and refuse to pay the Plaintiff the appropriate insurance policy benefits due and owing.

13. As a result, Plaintiff has suffered the loss of benefits and attendant financial hardship and pain and suffering.

CAUSES OF ACTION

I. BREACH OF CONTRACT

14. Paragraphs 1-13 are incorporated herein by reference.

15. Plaintiff had a policy of insurance with Defendant State Farm on the vehicle driven by her at all times relevant hereto with UIM coverage included therein.

16. The accident at issue was caused by a third-party tortfeasor who was underinsured for Plaintiff's injuries.

17. Pursuant to the terms of the applicable insurance policy, this is a factual situation wherein both the UIM coverage contained in said policy applies.

18. Plaintiff has requested Defendant State Farm tender payment under said policy and Defendant has failed and refused to do so. Plaintiff has performed all conditions precedent under the policy.

19. Defendant State Farm has breached its contract of insurance and has wholly refused or neglected to pay Plaintiff the value of her damages which is due and owed.

II. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

20. Paragraphs 1-19 are incorporated herein by reference.

21. Plaintiff was insured under a policy of insurance written by Defendant State Farm providing UIM coverage.

22. Plaintiff requested Defendant State Farm tender any and all applicable benefits under such policy and coverages but Defendant has failed and refused to do so.

23. In its handling of Plaintiff's claims for benefits, and as a matter of routine practice in handling similar claims, Defendant State Farm breached its affirmative duty to deal fairly and in good faith towards the Plaintiff in the following respects:

- a. Failing to pay Plaintiff the benefits she was entitled under the policy of insurance at a time when Defendant knew Plaintiff was entitled to those benefits;

b. Withholding payment of benefits knowing that Plaintiff's claim for benefits was valid;

c. Unreasonably delaying payment of benefits without reasonable basis;

d. Refusing to pay Plaintiff's claims for reasons contrary to the express provisions of the law;

e. Intentionally and recklessly misapplying provisions of the insurance policy and looking for ways to avoid paying some or all of Plaintiff's claims;

f. Failing to properly investigate Plaintiff's claims for benefits;

g. Failing to properly evaluate Plaintiff's claims for benefits;

h. Failing to adopt and implement reasonable standards for the prompt investigation, evaluation and handling of claims arising under its policies, including Plaintiff's;

i. Unreasonably delaying Plaintiff's claim and putting the burden of investigation onto Plaintiff and her attorneys; and

j. Failing to attempt to act in good faith to effectuate a prompt and fair settlement of Plaintiff's claims.

24. As a direct result of Defendant State Farm's breach of contract and breach of its affirmative duty of good faith and fair dealing, Plaintiff has suffered the loss of insurance benefits, mental and emotional distress, anxiety, embarrassment, medical expenses and financial hardship.

III. PUNITIVE DAMAGES

25. Paragraphs 1-24 are incorporated herein by reference.

26. The intentional, wanton and reckless conduct of Defendant in disregard of Plaintiff and others was conducted with full knowledge, in that Defendant knew, or should have known, of the severe adverse consequences of their actions upon Plaintiff and others.

27. Such actions were not only detrimental to Plaintiff, but to the public in general.

28. Defendant acted intentionally, maliciously, and in reckless disregard of the rights of Plaintiff. As a result, Plaintiff is entitled to recover punitive damages against the Defendant.

WHEREFORE, based on the foregoing, Plaintiff prays that the Court grant her the relief sought, including but not limited to actual damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), punitive damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), all applicable pre- and post-judgment interest, reasonable attorneys' fees, costs, and all other relief deemed appropriate by this Court.

Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN, PLLC



Donald E. Smolen, II, OBA #19944
Laura L. Hamilton, OBA #22619
701 S. Cincinnati Ave.
Tulsa, OK 74119
(918) 585-2667 P
(918) 585-2669 F
donaldsmolen@ssrok.com
laurahamilton@ssrok.com
Attorneys for Plaintiff

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

RECEIVED
OKLAHOMA INSURANCE DEPARTMENT
OCT 11 2017
Legal Division

AVY HAMIL,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, A Foreign For
Profit Corporation,

Defendants.

CJ-2017-03957

LINDA G. MORRISSEY

ATTORNEY LIEN CLAIMED

ORIGINAL SUMMONS

SERVE BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

To the above-named Defendant(s)

You have been sued by the above named plaintiff(s), and you are directed to file a written answer to the attached petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment will be rendered against you with costs of the action.

Issued this 5 day of 10, 2017

DON NEWBERRY, Court Clerk

County Court Clerk

By

Deputy Court Clerk

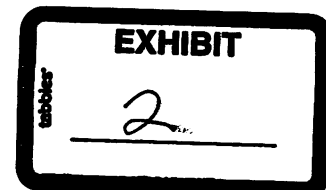
(Seal)

This summons and order was served on

(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER
CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE
CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE
TIME LIMIT STATED IN THIS SUMMONS.

Return ORIGINAL for filing.



PERSONAL SERVICE

I certify that I received the foregoing Summons the _____ day of _____, 2017, and that I delivered a copy of said Summons with a copy of the Petition to the following named defendant personally in _____ County, _____ at the address and on the date set forth opposite each name, to-wit:

Name of Defendant	Address	Date of Service
_____	_____	_____
_____	_____	_____

USUAL PLACE OF RESIDENCE

I certify that I received the foregoing Summons on the _____ day of _____, 2017, and that on _____, I served _____ by leaving a copy of said summons with a copy of the attached Petition at _____, which is his/her dwelling house or usual place of abode, with _____, a person then residing therein, who is fifteen (15) years of age or older.

NOT FOUND

Received this Summons this _____ day of _____, 2017. I certify that the following persons of the defendant within named not found in said County: _____.

FEES

Fee for service \$ _____, Mileage \$ _____, Total \$ _____.

Dated this _____ day of _____, 2017.

By:

Sheriff of _____ County,

AFFIDAVIT

I, _____, the undersigned, under oath, do say that I served this Summons and made the return thereon, according to law that I am duly authorized to make this affidavit so help me God.
 Sheriff of _____ County,

Subscribed to and sworn to before me this _____ day of _____, 2017.

My Commission Expires: _____

Seal

Notary Public

CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed copies of the foregoing summons with a copy of the Petition to the following named defendant at the address shown by certified mail, addressee only, return receipt requested, on the _____ day of _____, 2017, and receipt thereof on the dates shown:

Defendant	Address Where Served	Date Received
_____	_____	_____
_____	_____	_____

 Signature of person mailing summons



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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

AVY HAMIL, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.	No. CJ-2017-3957 (Civil relief more than \$10,000: BREACH OF AGREEMENT - CONTRACT) Filed: 10/05/2017 Judge: Morrissey, Linda G.
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Parties

HAMIL, AVY , Plaintiff
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY , Defendant

Attorneys

Attorney

SMOLEN, DONALD E II(Bar # 19944)
SMOLEN,SMOLEN & ROYTMAN PLLC
701 S CINCINNATI AVE
TULSA, OK 74119

Represented Parties

HAMIL, AVY

Events

Event	Party	Docket	Reporter
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Issues

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

Issue # 1.

Issue: BREACH OF AGREEMENT - CONTRACT (CONTRACT)

Filed by: HAMIL, AVY

Filed Date: 10/05/2017

Party Name:

Disposition Information:


Plaintiff: HAMIL, AVY Pending.

Docket

Date	Code	Count	Party	Serial #	Entry Date	
10-05-2017	TEXT	1		102986666	Oct 5 2017 4:17:34:330PM	\$ 0.00
CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.						

EXHIBIT

3

Date	Code	Count	Party	Serial #	Entry Date		
10-05-2017	CONTRACT	-		102986668	Oct 5 2017 4:17:34:477PM	Realized	\$ 0.00
	BREACH OF AGREEMENT - CONTRACT						
10-05-2017	DMFE	-		102986669	Oct 5 2017 4:17:34:513PM	Realized	\$ 7.00
	DISPUTE MEDIATION FEE(\$ 7.00)						
10-05-2017	PFE1	-		102986670	Oct 5 2017 4:42:58:757PM	Realized	\$ 163.00
	PETITION(\$ 163.00)						
	 Document Available (#1038417531)						
10-05-2017	PFE7	-		102986671	Oct 5 2017 4:17:34:513PM	Realized	\$ 6.00
	LAW LIBRARY FEE(\$ 6.00)						
10-05-2017	OCISR	-		102986672	Oct 5 2017 4:17:34:513PM	Realized	\$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)						
10-05-2017	OCJC	-		102986673	Oct 5 2017 4:17:34:513PM	Realized	\$ 1.55
	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND(\$ 1.55)						
10-05-2017	OCASA	-		102986674	Oct 5 2017 4:17:34:513PM	Realized	\$ 5.00
	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES(\$ 5.00)						
10-05-2017	SSFCHSCPC	-		102986675	Oct 5 2017 4:17:34:513PM	Realized	\$ 10.00
	SHERIFF'S SERVICE FEE FOR COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER(\$ 10.00)						
10-05-2017	CCADMINCSF	-		102986676	Oct 5 2017 4:17:34:513PM	Realized	\$ 1.00
	COURT CLERK ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER(\$ 1.00)						
10-05-2017	CCADMIN0155	-		102986677	Oct 5 2017 4:17:34:513PM	Realized	\$ 0.16
	COURT CLERK ADMINISTRATIVE FEE ON \$1.55 COLLECTION(\$ 0.16)						
10-05-2017	SJFIS	-		102986678	Oct 5 2017 4:17:34:513PM	Realized	\$ 0.45
	STATE JUDICIAL REVOLVING FUND - INTERPRETER AND TRANSLATOR SERVICES(\$ 0.45)						
10-05-2017	DCADMIN155	-		102986679	Oct 5 2017 4:17:34:513PM	Realized	\$ 0.23
	DISTRICT COURT ADMINISTRATIVE FEE ON \$1.55 COLLECTIONS(\$ 0.23)						
10-05-2017	DCADMIN05	-		102986680	Oct 5 2017 4:17:34:513PM	Realized	\$ 0.75
	DISTRICT COURT ADMINISTRATIVE FEE ON \$5 COLLECTIONS(\$ 0.75)						
10-05-2017	DCADMINCSF	-		102986681	Oct 5 2017 4:17:34:513PM	Realized	\$ 1.50
	DISTRICT COURT ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER(\$ 1.50)						
10-05-2017	CCADMIN04	-		102986682	Oct 5 2017 4:17:34:513PM	Realized	\$ 0.50
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.50)						
10-05-2017	LTF	-		102986683	Oct 5 2017 4:17:35:097PM	Realized	\$ 10.00
	LENGTHY TRIAL FUND(\$ 10.00)						

Date	Code	Count	Party	Serial #	Entry Date		
10-05-2017	SMF	-		102986684	Oct 5 2017 4:17:35:180PM	Realized	\$ 10.00
	SUMMONS FEE (CLERKS FEE)(\$ 10.00)						
10-05-2017	SMIMA	-		102986685	Oct 5 2017 4:17:35:260PM	Realized	\$ 0.00
	SUMMONS ISSUED - MAILED BY ATTORNEY						
10-05-2017	TEXT	-		102986667	Oct 5 2017 4:17:34:390PM	-	\$ 0.00
	OCIS HAS AUTOMATICALLY ASSIGNED JUDGE MORRISSEY, LINDA G. TO THIS CASE.						
10-05-2017	ACCOUNT	-		102986727	Oct 5 2017 4:18:18:750PM	-	\$ 0.00
	RECEIPT # 2017-3643952 ON 10/05/2017.						
	PAYOR: SMOLEN SMOLEN TOTAL AMOUNT PAID: \$ 242.14.						
	LINE ITEMS:						
	CJ-2017-3957: \$173.00 ON AC01 CLERK FEES.						
	CJ-2017-3957: \$6.00 ON AC23 LAW LIBRARY FEE CIVIL AND CRIMINAL.						
	CJ-2017-3957: \$1.66 ON AC31 COURT CLERK REVOLVING FUND.						
	CJ-2017-3957: \$5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES.						
	CJ-2017-3957: \$1.55 ON AC59 COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND.						
	CJ-2017-3957: \$7.00 ON AC64 DISPUTE MEDIATION FEES CIVIL ONLY.						
	CJ-2017-3957: \$0.45 ON AC65 STATE JUDICIAL REVOLVING FUND, INTERPRETER SVCS.						
	CJ-2017-3957: \$2.48 ON AC67 DISTRICT COURT REVOLVING FUND.						
	CJ-2017-3957: \$25.00 ON AC79 OCIS REVOLVING FUND.						
	CJ-2017-3957: \$10.00 ON AC81 LENGTHY TRIAL FUND.						
	CJ-2017-3957: \$10.00 ON AC88 SHERIFF'S SERVICE FEE FOR COURT HOUSE SECURITY.						

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